(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 601 OF 2003.

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. Sudesh Usgaonkar, Advocate for the Petitioners

Mr. M.B. D'Costa, Sr. Advocate with Mr. J.A. Lobo, Advocate for the respondents.

CORAM : **N.N. MHATRE, J.**

DATE : 9TH JANUARY, 2004.

P.C.:

The petitioners are aggrieved by the Order of the Appellate Court granting amendment sought by the plaintiffs/respondents. The amendment was to the effect that the plaintiffs be put in possession of the suit property. The appellate court has found that the proposed amendment sought by the plaintiffs is only by way of clarification and since no new cause of action has been introduced, no question of limitation would arise. It is on this basis that the amendment has

been allowed.

This observation of the appellate Court is taken exception to by the learned Advocate for the petitioners. It is submitted that although the amendment is allowed, the appellate court would have to consider whether such a prayer could be granted as the question of limitation would have to be considered.

On behalf of the respondents, the judgment of the Supreme Court in **Ragu Thilak D. John v. S. Rayappan and others** reported **in** (2001) 2 S.C.C., 472 is pointed out.

It is no doubt true that although the amendment is allowed, the Court would have to consider whether the prayer sought can be granted or whether it is barred by limitation. All these questions will have to be considered by the Court below while granting the final

relief. In view of this, although the order allowing the amendment is sustained, the observations made that the proposed amendment is only by way of clarification and that no new cause of action has been introduced and that no question of limitation would arise, are set aside.

Petition disposed of accordingly.

NISHITA MHATRE, J.

sl.